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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,409	12/12/2003	Eric L. Langley	63733.2	1167
27883	7590	08/07/2006	EXAMINER	
GRADY K. BERGEN 3333 LEE PARKWAY SUITE 600 DALLAS, TX 75219			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/734,409

Applicant(s)

LANGLEY, ERIC L.

Examiner

Marie Patterson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 75-127 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 75-85, 89-117 and 122-127 is/are rejected.
- 7) ☒ Claim(s) 86-88 and 118-121 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 75-79, 81, 82, 90-101, 105-112, 114, 115, and 123-127 are rejected under 35 U.S.C. 102(e) as being anticipated by Townsend (6692454).

Townsend shows a shoe comprising a sole inliner (52 and 53) coupled (see figures 22-25) to a back inliner (20 and 13'), an upper comprising a top and bottom member (24 and 25) as claimed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 79-82, 112, and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend in view of either McDonald (5319869) or Aveni (5467537).

Townsend shows a shoe substantially as claimed except for the exact upper neoprene flexible member. Either McDonald or Aveni teaches providing a flexible neoprene member (11 or 30) in an upper. It would have been obvious to provide a

flexible neoprene member as taught by either McDonald or Aveni in the shoe of Townsend to provide a tighter, more conforming fit.

5. Claims 83, 84, 102, 103, 116, and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend in view of Sand (5894684).

Townsend shows a shoe substantially as claimed except for a cover. Sand teaches providing a cover (64) on a shoe. It would have been obvious to provide a cover as taught by Sand in the shoe of Townsend to protect the foot, shoe, upper, etc.

6. Claim 85 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 79-82, 112, and 113 above, and further in view of Sand.

Townsend as modified above shows a shoe substantially as claimed except for a cover. Sand teaches providing a cover (64) on a shoe. It would have been obvious to provide a cover as taught by Sand in the shoe of Townsend as modified above to protect the foot, shoe, upper, etc.

7. Claims 89, 104, and 122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend.

Townsend shows a shoe substantially as claimed except for specifically reciting providing cleats. Townsend does suggest the shoe being of a football or track shoe types (see column 21 lines 15-20). These shoes conventionally have cleats thereon. It would have been obvious to provide cleats on the shoe of Townsend as is well known and conventional to increase the traction of the shoe to allow the shoe to be used for football, track, etc..

***Allowable Subject Matter***

8. Claims 86-88, and 118-121 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claims 75-127 have been considered but are moot in view of the new ground(s) of rejection.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson  
Primary Examiner  
Art Unit 3728